

2008 BCSECCOM 91

February 13, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – *Securities Act* s. 48, 76 Business Associates - Trades in securities to partners, and their trusts, corporations, and family members - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution to a business associate or partner - Trades in securities to partners, and their trusts, corporations, and family members - The trades are in securities of entities related to a business; the trades will only be to and among partners of the business, and a partner's spouse, corporation and trust; the trades are structured as such to permit partners to finance the business on a tax advantaged basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation of
British Columbia and Ontario (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Lang Michener LLP, LML&S Limited Partnership and
LM Services Limited Partnership

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Lang Michener LLP, LML&S Limited Partnership and LM Services Limited Partnership for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

2008 BCSECCOM 91

- (a) the distribution of LP Units (as defined below) by either LML&S Limited Partnership or LM Services Limited Partnership to the Trust (as defined below) will not be subject to the registration and prospectus requirements contained in the Legislation (the Requested LP Unit Relief); and
- (b) the distribution of Trust Units (as defined below) by the Trust to Specified Investors (as defined below) will not be subject to the registration and prospectus requirements contained in the Legislation (the Requested Trust Unit Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (i) the British Columbia Securities Commission is the principal regulator for this application, and
- (ii) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in NI 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by Lang Michener LLP (Lang):

1. Lang is a limited liability partnership formed for the practice of law with one office in British Columbia and two offices in Ontario (collectively, the Jurisdictions); the British Columbia office of Lang is called the “Western Division” and the Ontario offices of Lang are called the “Eastern Division”;
2. the partners of Lang (Lang Partners) are approximately 90 lawyers or their Professional Corporations (as defined below);
3. a Lang Partner that is a Professional Corporation is a corporation incorporated or continued under the laws of British Columbia or Ontario where the Lang Partner practices, and which holds, where required, a valid permit or licence to practice its profession in such province;
4. LML&S Limited Partnership (the Western LP) is a limited partnership established under the laws of British Columbia and carries on the business of providing secretarial, accounting and administrative services to the Western Division pursuant to a service agreement entered into between Lang and the

2008 BCSECCOM 91

Western LP; the general partner of the Western LP is LML&S General Partner Ltd. (WD-GP);

5. LM Services Limited Partnership (the Eastern LP) is a limited partnership established under the laws of Ontario and carries on the business of providing secretarial, accounting and administrative services to the Eastern Division pursuant to a service agreement entered into between Lang and the Eastern LP; the general partner of the Eastern LP is 1049622 Ontario Inc. (ED-GP);
6. the Eastern LP provides its limited partners with annual audited financial statements, and the Western LP provides its limited partners with unaudited financial statements, not later than 120 days after the end of each of their respective financial years;
7. neither the Western LP nor the Eastern LP (each, an LP and together, the LPs) is, and neither of them has any present intention of becoming, a reporting issuer in either Jurisdiction;
8. the interests of the limited partners in each LP are divided into limited partnership units (the LP Units); LP Units of the Eastern LP are not transferable except to (i) spouses of Lang Partners in the Eastern Division (Eastern Partners), (ii) Professional Corporations, and (iii) trusts established for the benefit of those Eastern Partners and their immediate family members (Eastern Family Trusts); LP Units of the Western LP are not transferable except to the Western LP for cancellation, or as a pledge to a lending institution as security in connection with the financing or refinancing of the acquisition of an LP Unit; consequently, no market has developed or will develop for the LP Units;

As to the Western Division

9. the Western LP may issue LP Units only to (i) Lang Partners in the Western Division (Western Partners), (ii) employees and independent contractors (each, an Employee) of the Western Division who are approved by the WD-GP and 75% of the Western Partners, (iii) spouses of Western Partners and Employees, and (iv) trusts established for the benefit of Western Partners, Employees, and their immediate family members (Western Family Trusts and, together with Eastern Family Trusts, the Family Trusts);
10. all of the outstanding LP Units of the Western LP are currently held by Western Partners, their spouses, or Western Family Trusts, and have been issued in reliance on exemptions from the registration and prospectus requirements provided by National Instrument 45-106 (NI 45-106), or predecessor exemptions contained in the applicable Legislation;

2008 BCSECCOM 91

11. currently, a Western Partner, the spouse or the Western Family Trust of a Western Partner, who or which holds LP Units of the Western LP will cease to hold any such LP Units when the Western Partner ceases to be a Western Partner; the spouse or Western Family Trust will also cease to hold any such LP Units upon cessation of the required spousal relationship, or upon the beneficiaries of the Western Family Trust no longer being members of the immediate family of the Western Partner;

As to the Eastern Division

12. under the governing limited partnership agreement, the Eastern LP may issue LP Units only to (i) Eastern Partners, (ii) spouses of Eastern Partners, (iii) Professional Corporations, and (iv) Eastern Family Trusts;
13. all of the outstanding LP Units of the Eastern LP are currently held by Eastern Partners, their spouses, or Eastern Family Trusts, and have been issued in reliance on exemptions from the registration and prospectus requirements provided by NI 45-106, or predecessor exemptions contained in the applicable Legislation;
14. currently, an Eastern Partner, the spouse or the Eastern Family Trust of an Eastern Partner, who or which holds LP Units of the Eastern LP will cease to hold any such LP Units when the Eastern Partner ceases to be an Eastern Partner; the spouse or Eastern Family Trust will also cease to hold any such LP Units upon cessation of the required spousal relationship, or upon the beneficiaries of the Eastern Family Trust no longer being members of the immediate family of the Eastern Partner;

The Trust Proposal

15. Lang Partners propose to implement certain changes to the investment structure for the LPs in order to accommodate retirement planning for Lang Partners;
16. under the proposed restructuring (the Trust Proposal), the Lang Partners would cause a trust (the Trust) to be established; it is intended that the Trust will be a “mutual fund trust” as defined for tax purposes;
17. at the closing of the Trust Proposal, the capital of the Trust will consist of A units (A Units), E units (E Units) and W units (W Units) (A Units, E Units, and W Units are together, the Trust Units) and through a series of transactions:
 - (a) the LPs will redeem all currently outstanding LP Units for their original issue price;

2008 BCSECCOM 91

- (b) Specified Investors (as defined below) will use an equivalent amount of money to subscribe for Trust Units; and
 - (c) the Trust will use those subscription funds (which will exceed \$150,000 in each case) to subscribe for LP Units of the Eastern and Western LPs;
- 18. subsequent to the closing of the Trust Proposal, whenever new Lang Partners are admitted to Lang and the applicable Specified Investors purchase Trust Units, the Trust will purchase LP Units in the Western LP or the Eastern LP, as the case may be; the issue price of the Trust Units and LP Units in these instances will often be less than \$150,000;
- 19. A Units will be issued to all Lang Partners or one or more of their related Specified Investors; E Units and W Units will be issued only to Eastern Partners or Western Partners, respectively, or to one or more of their related Specified Investors;
- 20. the Trust Units will have essentially the same economic rights and restrictions as the LP Units; in particular, the Trust Units will not be transferable except that they will be redeemable by the Trust and retractable by holders of Trust Units in accordance with the terms of the Trust Units, and will be transferable as a pledge to a lending institution as security for indebtedness incurred for the purpose of financing the acquisition, or continued ownership, of the security; consequently, no market will develop for the Trust Units;
- 21. under the Trust Proposal, Trust Units will be issued only to the following investors (each a Specified Investor):
 - (a) a Lang Partner;
 - (b) the spouse or common-law partner of a Lang Partner; and
 - (c) any other person approved by the trustees of the Trust (an Other Approved Person);
- 22. the class of "Other Approved Person" will be restricted to persons who are any of the following:
 - (a) a Family Trust;
 - (b) a retired Lang Partner who satisfies certain other requirements, or his or her spouse, common-law partner or Family Trust;

2008 BCSECCOM 91

- (c) counsel or other special adviser to Lang, or his or her spouse or common-law partner;
 - (d) a senior management employee of Lang, or his or her spouse or common-law partner; or
 - (e) an RRSP or RRIF, the annuitant or beneficiary of which is a Lang Partner or Other Approved Person, or his or her spouse or common-law partner;
23. except for a Lang Partner or Other Approved Person, or the spouse or common-law partner of the Lang Partner or Other Approved Person, who is both a trustee of and a beneficiary under a particular Family Trust, no beneficiary of a Family Trust will directly or indirectly contribute money to the Family Trust, be liable for any amount in respect of the Family Trust, or be involved in making any investment decisions by the Family Trust;
24. Specified Investors have not been, and will not be induced, to purchase the Trust Units by expectation of status or continued status as a Lang Partner, or by expectation of employment or engagement or continued employment or engagement by any person;
25. the primary purpose of the Trust Proposal is to facilitate retirement planning for the Lang Partners;
26. the Trust will not qualify as an accredited investor as defined in NI 45-106 and other exemptions in NI 45-106 may not be available for the distribution of LP Units to the Trust after the closing of the Trust Proposal when new Lang Partners are admitted to Lang; and
27. it is anticipated that in the future there may be occasions when Specified Investors who purchase Trust Units may not qualify for an exemption in NI 45-106.

Decision

¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

- (1) The decision of the Decision Makers is that the Requested LP Unit Relief is granted.

2008 BCSECCOM 91

(2) The decision of the Decision Makers is that the Requested Trust Unit Relief is granted provided that:

- (a) before the issuance of the Trust Units to Specified Investors, the Trust will obtain a written statement from the Specified Investor acknowledging receipt of a copy of this decision document and further acknowledging the subscriber's understanding that the right to receive continuous disclosure is not available to the Specified Investor in respect of the Trust Units; and
- (b) the first trade of a Trust Unit will be a distribution under the Legislation of the Jurisdiction in which the trade takes place, unless such trade is a redemption, retraction or cancellation of the Trust Unit in accordance with its terms, or is made for the purposes of giving collateral for a bona fide debt.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission